NO. 21830

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARTHUR WARTSON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

FILED

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APPELLEE'S BRIEF

I

JURISDICTIONAL STATEMENT

This is an appeal from a conviction of robbery of a national bank in violation of Title 18, United States Code, Section 2113(a). Appellant was indicted on December 21, 1966 [C. T. 2].[1/] Appellant entered a plea of not guilty and trial, by jury, commenced on February 2, 1967, before the Honorable Irving Hill, United States District Judge, Central District of California. On February 3, 1967, Judge Hill, outside the presence of the jury, heard and denied a motion filed by appellant on that date to suppress evidence

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1/ C. T. refers to Clerk's Transcript.

[R. T. 196].[2/] On February 8, 1967, appellant was found guilty and, on February 27, 1967, was sentenced under the Young Adult Offender's Act, Title 18, United States Code, Section 4209 [R. T. 420, 436].

Jurisdiction of the District Court was based on Sections 2113(a) and 3231, Title 18, United States Code. Jurisdiction of this Court to entertain the appeal is derived from Sections 1291 and 1294, Title 28, United States Code.

II

STATUTE INVOLVED

Title 18, United States Code, Section 2113(a), provides in part:

> "Whoever, by force and violence, or by intimidation, takes . . . from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management or possession of, any bank . . . shall be fined not more than $5,000 or imprisoned not more than twenty years, or both."

2/ R. T. refers to Reporter's Transcript of Proceedings.

III

STATEMENT OF FACTS

On December 7, 1966, the Bank of America, 110th and Main Street Branch, was robbed of $1,099.00 by a single bandit at approximately 12:20 P M. [R. T. 61, 90]. Included in the amount taken was $100.00 of marked money [R. T. 90]. At approximately 12:40 P. M., on that date, Officer Melvin Smith of the Los Angeles Police Department entered the residence of appellant [R. T. 209]. Shortly thereafter, appellant was arrested by Officer Smith. He was then taken to the 77th Police Station where he was booked and searched [R. T. 185-186]. Fourteen of the marked bills were found in appellant's possession [R. T. 238].

On February 3, 1967, appellant moved to suppress the marked bills on the ground that they were the product of an unlawful search [R. T. 166-167]. The trial court, after holding a hearing on appellant's motion, ruled that the arrest was based upon probable cause and the subsequent search of appellant was incident to the lawful arrest [R. T. 196]. The marked bills were later admitted into evidence, over the objection of appellant [R. T. 211].

IV

SPECIFICATION OF ERROR

Appellant's opening brief raises only one issue: Did reasonable cause exist for the arrest of appellant for the robbery of the

Bank of America bank?

V

ARGUMENT

THE TRIAL COURT DID NOT ERR IN FINDING THAT REASONABLE CAUSE EXISTED FOR APPELLANT'S ARREST.

The principle that a police officer may search, without a warrant, a person whom he has validly arrested is well established. See United States v. Rabinowitz, 339 U.S. 56, 60 (1950). Appellant does not challenge this principle. Rather, he contends that the arrest was invalid and, therefore, the search which followed was also invalid.

Officer Smith, of the Los Angeles Police Department, arrested appellant at his home without a warrant. The courts have held that, under such circumstances, the validity of the arrest must be determined by looking at state law, i. e., California law in this instance. See Ker v. California, 374 U.S. 23, 37 (1963); Ferganchick v. United States, 374 F.2d 559, 560 (9 Cir. 1967), cert den., 387 U.S. 947 (1967), and Dagampat v. United States, 352 F.2d 245, 247 (9 Cir. 1965), cert den., 383 U.S. 950 (1965).

The California Penal Code, Section 836(3), (as amended in 1957), provides, in part, as follows:

> "A peace officer may . . . without a warrant, arrest a person: . . . Whenever he has reasonable cause to believe that the person

to be arrested has committed a felony. . . ." 3/

The California courts have consistently held that what constitutes reasonable cause depends upon the particular circumstances in each situation. See People v. Ross, 60 Cal. Rptr. 254, 259; 429 P. 2d 606, 611 (Cal. S. Ct., 1967). Whether reasonable cause exists must be determined by looking at the facts known to the arresting officer at the time he makes the arrest. See People v. Fritz, 61 Cal. Rptr. 247, 251; 253 A. C. A. 1 (Court of Appeals, 1967). His knowledge of the facts, however, need only be sufficient to lead him to believe:

> ". . . [that there] is more evidence for [the arrest] than against, so that a man of ordinary care and prudence, knowing what the arresting officer knows, would be led to believe or conscientiously entertain a strong suspicion of the accused's guilt, although reserving some possibility for doubt." People v. Murrietta, 60 Cal. Rptr. 56, 57; 251 A. C. A. 1147 (Court of Appeals, 1967). Accord: People v. Davis, 33 Cal. Rptr. 590, 592; 220 Cal. App. 2d 49 (Court of Appeals, 1963). See also, Draper v. United States, 358 U. S. 307, 313 (1958). Appellee respectfully submits that the information which Officer Smith possessed at the time he arrested appellant more than satisfies the requirements for reasonable cause.

3/ Robbery is a felony under California law. See California Penal Code §211.

A. OFFICER SMITH KNEW THE PHYSICAL CHARACTERISTICS OF THE ROBBER.

The robbery occurred at approximately 12:20 P.M., [R.T. 61]. At approximately 12:35 P.M., Officer Smith, who was patrolling in a police car, received a description of the bank robber over the police radio. 4/ He testified that the robber was described as a ". . . male Negro, 22, six feet two inches, 190 pounds, black and brown, medium dark brown complected, bushy hair, [and] athletic build. . . . " [R.T. 178].

The eyewitnesses to the robbery described the robber as a "male Negro" [R.T. 89], "in his early twenties" [R.T. 89], "six [feet] two [inches]" [R.T. 58, 88], "185 pounds" [R.T. 88-89], "medium brown" [R.T. 58], "dark complected" [R.T. 102], and "medium bushy hair" [R.T. 58].

This eyewitness description of the robber is practically identical with the description which Officer Smith testified that he had received. On the basis of this similarity, it is clear that Officer Smith knew, in detail, the physical characteristics of the robber. It is also clear from this similarity that, contrary to appellant's contention that Officer Smith "put together his testimony retrospectively", (see appellant's Opening Brief, page 10) Officer Smith's pursuit of the robber was based on the information which

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4/ It is settled that a police officer is entitled to rely upon information received through such an official source. See People v. Fritz, supra, 61 Cal. Rptr., at 251, and People v. Ross, supra, 60 Cal. Rptr. at 259.

the eyewitnesses had provided.

B. OFFICER SMITH KNEW THE DESCRIPTION OF THE ROBBER'S CLOTHING.

According to Officer Smith's testimony, the police radio broadcast described the robber as "wearing dark trousers, green or yellow sweater and a green and yellow shirt." [R. T. 198-199]. The bank teller who was robbed described the robber as wearing "dark slacks . . . a light olive green alpaca sweater [and a shirt which she did not notice]" [R. T. 58]. Two other eyewitnesses testified that the robber was wearing a "gray . . . or green," [R. T. 89] or "dark sweater," [R. T. 102] and "dark" [R. T. 89] trousers. The only witness who recalled the robber's shirt testified that it was "beige or light yellow or tan." [R. T. 138].

Appellant cites Officer Smith's description of the clothing of the robber as "<u>black and yellow shirt,</u> green sweater and dark trousers." (Emphasis added.) (See appellant's Opening Brief, p. 9.) Appellant states that none of the eyewitnesses described the robber's shirt as "black and yellow". Appellant contends, therefore, that Officer Smith must have made up the description after he had observed a black and yellow shirt in appellant's house. (See appellant's Opening Brief, pp. 9-10.)

Appellee respectfully submits that Officer Smith did initially misstate the color of the shirt as "black and yellow" but then corrected his error and stated that the shirt was "yellow and

green." 5/ Appellee further submits that this description is consistent with the description of the robber's clothing given by the eyewitnesses.

C. OFFICER SMITH KNEW WHERE THE ROBBER HAD GONE AFTER THE ROBBERY.

The police radio broadcast which Officer Smith heard stated that the robber, after fleeing from the bank, had taken a cab to 117th Street and San Pedro [R. T. 178-179]. Officer Smith and his partner proceeded immediately to that location [R T. 179]. Officer Smith testified that he then interviewed two people on the street to determine if they had recently observed anyone arrive in a cab at that location [R. T. 179-180]. According to Officer Smith's testimony, both people had recently observed a cab in the area [R. T. 179-180]. Furthermore, one of the people, Mr. Dudley Jenkins, described the person who had gotten out of the cab as a " '. . . male Negro, early twenties, about six feet, about 190 pounds.' " [R. T. 180]. Mr. Jenkins, according to Officer Smith, told him [Officer Smith], that the person had entered the house at 245 East 117th Street [R. T. 181]. After receiving this information and other information concerning the clothing the man wore, Officer Smith proceeded to the house at 245 East 117th Street [R. T. 181]. He was admitted into the house and taken into the bathroom where

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5/ Cf. R. T. 178, 199 and 214.

he observed appellant taking a bath [R. T. 201].

Appellant concedes that if Officer Smith's testimony is believed, probable or reasonable cause to go to appellant's home is established. (See appellant's Opening Brief, p. 8.) However, appellant contends that Officer Smith's testimony was "completely discredited" (see e.g., appellant's Opening Brief, p. 9), and that Mr. Jenkins' testimony failed to connect the robber with appellant's house. Appellee respectfully submits that Officer Smith's testimony was not discredited 6/ and that Mr. Jenkins' recollection of what he told Officer Smith was in itself sufficient to point Officer Smith to appellant's house.

Mr. Jenkins testified that approximately five or six minutes before Officer Smith arrived at the intersection of 117th Street and San Pedro [R. T. 161], he observed a man carrying a "green-looking" sweater or jacket get out of a cab and cross the street 7/ to

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6/ Appellee has previously pointed out that the eyewitnesses' description of the robber was practically identical with the description Officer Smith testified that he received. The only discrepancy between Officer Smith's testimony and the eyewitnesses' as to the robber's clothing was as to the shirt. The eyewitness testified that the shirt was "beige or light yellow or tan" [R. T. 138], and Officer Smith testified that he was told that the shirt was "green and yellow". [R. T. 199].

7/ Mr. Jenkins gave his address as 11705 South San Pedro Street, which is on the corner of 117th and South San Pedro [R. T. 156]. According to Officer Smith, the house numbered 250 East 117th Street is next to Mr. Jenkins' garage [R. T. 216], and on the opposite side of the street from appellant's house at 245 East 117th Street [R. T. 181]. When Mr. Jenkins observed the man get out of the cab, he was working on his garage [R. T. 156]; therefore, according to Mr. Jenkins' testimony that the man "crossed the street," the man would have gone toward the houses on the side of the street on which appellant lived.

some houses [R. T. 158]. Mr. Jenkins was further able to recall that the man went toward the first two or three houses [R. T. 158] across the street. (Appellant lived in the third house [R. T. 274].)

Under these circumstances, Officer Smith had a duty to continue his investigation. He had enough information to entitle him to go to appellant's house to interrogate him.[8/] As the California Court of Appeals stated in People v. McCottry, 23 Cal. Rptr. 309; 205 Cal. App. 2d 698 (Court of Appeals, 1962):

> "When police officers have suspicions concerning criminal activities it is proper for them 'to seek interviews with suspects or witnesses or to call upon them at their homes for such purposes.' " [Citations of authority omitted.] 23 Cal. Rptr. at 312. Accord: Frye v. United States, 315 F. 2d 491, 494 (9 Cir. 1963), cert den., 375 U. S. 849 (1963)

Appellee respectfully submits that it is immaterial whether Mr. Jenkins specifically directed Officer Smith to appellant's house or whether Officer Smith, based on the information he received from Mr. Jenkins, determined to approach appellant's house. The fact is that the first, and only, house which Officer Smith approached was appellant's [R. T. 191]. The testimony of either

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8/ The California decisions indicate that a police officer is entitled to interrogate a suspect on the basis of less information than is required to support a warrantless arrest. See People v. Gamboa, 235 Cal. App. 2d 444; 45 Cal. Rptr. 393, 395 (Court of Appeals, 1965).

witness, therefore, establishes probable cause to approach appellant's house.

D. APPELLANT VOLUNTARILY ADMITTED OFFICER SMITH INTO HIS HOME AND SHOWED HIM THE CLOTHES HE HAD BEEN WEARING.

At approximately 12:40 P. M., less than 30 minutes after the robbery had taken place, Officer Smith arrived at 245 East 117th Street, appellant's home [R. T. 209]. He was met at the door by a Negro woman, Mrs. Dorothy Mae James [R. T. 220]. When Officer Smith questioned Mrs. James, she told him that a Negro male lived at that address and described him as being "six-feet, about 200 pounds, medium complexion"[R. T. 182]. 9/ Officer Smith asked to speak with the man and Mrs. James told Officer Smith and his partner to come into the house [R. T. 182]. Appellant, who was in the bathroom at the time, told Officer Smith to come into the bathroom [R. T. 183]. In response to Officer Smith's request that he step out of the bath tub [R. T. 183], appellant put on a pair of dark green pants and he and Officer Smith walked into the bedroom where appellant put on a black and yellow shirt [R. T. 202]. Officer Smith asked appellant if he had had on any other

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9/ Appellant contends that Officer Smith's testimony as to Mrs. James' description of appellant smacks of police professionalism. (See appellant's Opening Brief, pp. 9-10) However, Mrs. James did not testify and Officer Smith's testimony as to how Mrs. James described appellant was not controverted at the trial.

witness, therefore, establishes probable cause to approach appellant's house.

D. APPELLANT VOLUNTARILY ADMITTED OFFICER SMITH INTO HIS HOME AND SHOWED HIM THE CLOTHES HE HAD BEEN WEARING.

At approximately 12:40 P. M., less than 30 minutes after the robbery had taken place, Officer Smith arrived at 245 East 117th Street, appellant's home [R. T. 209]. He was met at the door by a Negro woman, Mrs. Dorothy Mae James [R. T. 220]. When Officer Smith questioned Mrs. James, she told him that a Negro male lived at that address and described him as being "six-feet, about 200 pounds, medium complexion"[R. T. 182]. 9/ Officer Smith asked to speak with the man and Mrs. James told Officer Smith and his partner to come into the house [R. T. 182]. Appellant, who was in the bathroom at the time, told Officer Smith to come into the bathroom [R. T. 183]. In response to Officer Smith's request that he step out of the bath tub [R. T. 183], appellant put on a pair of dark green pants and he and Officer Smith walked into the bedroom where appellant put on a black and yellow shirt [R. T. 202]. Officer Smith asked appellant if he had had on any other

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clothing when he entered the house and appellant showed him a green and yellow sweater which he stated he had also had on [R. T. 202]. Appellant and Officer Smith then left the house and Officer Smith arrested appellant for the robbery of the bank [R. T. 203].

E. OFFICER SMITH DID NOT ARREST APPELLANT UNTIL AFTER HE HAD SEEN APPELLANT'S CLOTHING AND HE AND APPELLANT HAD LEFT THE HOUSE.

Appellant contends that Officer Smith placed appellant under arrest when Officer Smith stepped into the bathroom. (See appellant's Opening Brief, p. 14) Appellant's testimony, however, indicates that appellant did not consider himself under arrest until the police officers handcuffed him [R. T. 281-282]. He was not handcuffed until he and the officers had left the house and had proceeded to the officers' car [R. T. 281-282].

When appellant's testimony is considered along with Officer Smith's testimony, it is clear that appellant was not placed under arrest, as that term is used in Sections 834 and 835 of the California Penal Code, until he was outside the house. Even if the facts are viewed in the light most favorable to appellant, Officer Smith's drawing of his gun when talking to appellant in the bathroom [R. T. 225] amounted to nothing more than a brief detention of appellant. It is settled in this Circuit that such a brief detention is not necessarily unlawful. As this Court recently stated:

> "We take it as settled that there is nothing

ipso facto unconstitutional in the brief detention of citizens under circumstances not justifying an arrest, for purposes of limited inquiry in the course of routine police investigations. Rios v. United States, 364 U.S. 253, 80 S.Ct. 1431, 4 L.Ed.2d 1688 (1960); Busby v. United States, 296 F.2d 328 (9th Cir. 1961). . . . . [D]ue regard for the practical necessities of effective law enforcement requires that the validity of brief, informal detention be recognized whenever it appears from the totality of the circumstances that the detaining officers could have had reasonable grounds for their action. A founded suspicion is all that is necessary, some basis from which the court can determine that the detention was not arbitrary or harassing."

Wilson v. Porter, 361 F.2d 412, 415 (9 Cir. 1966). Accord: Davis v. People of State of California, 341 F.2d 982, 986 (9 Cir. 1965), and Gilbert v. United States, 366 F.2d 923, 928 (9 Cir. 1966), cert. den., 388 U.S. 922 (1967).

VI

SUMMATION OF ARGUMENT

The only issue in this case is whether reasonable cause for arresting appellant existed at the time Officer Smith made the

arrest. This issue was raised by appellant in the trial court and the trial court determined that the arrest was based upon reasonable cause. The trial court's decision is not binding upon this Court but it is entitled to some weight. See Blackford v. United States, 247 F. 2d 745 (9 Cir. 1957), cert. den., 356 U.S. 914 (1958).

In reviewing the evidence in this case, appellee respectfully submits that this Court must view the evidence in the light most favorable to the Government. Noto v. United States, 367 U.S. 290, 296 (1961) and Redmon v. United States, 355 F. 2d 407, 411 (1966). Appellee further submits that the reasonableness of the arrest should not be determined by looking at each item of information individually; rather, the test is whether all the information, considered in its totality, in Officer Smith's possession at the time he made the arrest was sufficient to provide reasonable cause. See People v. Fritz, supra, 61 Cal. Rptr. at 251 and People v. Gamboa, supra, 45 Cal. Rptr. at 395.

Turning to the facts, in summary, the record below shows:

1. It was known that the robber had taken a cab to the intersection of 117th Street and San Pedro [R. T. 175].

2. Officer Smith arrived at that intersection approximately five minutes after a man, matching the description that Officer Smith had received of the robber, had arrived in a cab at 117th Street and San Pedro [R. T. 158-161, 180-181].

3. After interviewing two people at the intersection, Officer Smith went directly to appellant's house, the third house from the intersection [R. T. 191, 274].

4. When Officer Smith arrived at appellant's house, he was met by a woman who gave him a physical description of appellant [R. T. 182]. This description matched the robber's description which Officer Smith had received over the police radio [Cf. R. T. 198 and 182].

5. Officer Smith was voluntarily admitted into appellant's house at approximately 12:40 P. M. [R. T. 209], approximately fifteen or twenty minutes after the robbery had taken place.

6. Appellant voluntarily showed Officer Smith the clothes that he had been wearing [R. T. 183]. Appellant's pants and sweater matched the general description of the robber's clothing which Officer Smith had received over the police radio [Cf. R. T. 202 and 198].

7. Officer Smith and appellant left the house and Officer Smith then arrested appellant for the robbery [R. T. 184].

Appellee respectfully submits that when Officer Smith arrested appellant the information in his possession indicated that appellant was the robber. There was more evidence of appellant's guilt than there was against it. The information in his possession provided Officer Smith with sufficient reasonable cause to arrest appellant.

VII

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgment of the trial court should be affirmed.

Respectfully submitted,

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Attorneys for Appellee,
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CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

/s/ George G. Rayborn

GEORGE G. RAYBORN